



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 25, 2022

IN THE MATTER OF:

Appeal Board No. 622564

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective April 17, 2019, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to April 17, 2019 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed July 19, 2019 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor applied to the Appeal Board, pursuant to Labor Law §

620 (3), for a reopening and reconsideration of the Judge's decision. The Board considered the arguments contained in the written statement submitted by the claimant. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Our review of the record reveals that the case should be remanded to hold a hearing. In the application, the Commissioner of Labor has contended that it has new evidence that the claimant pled guilty to Grand Larceny in the fourth degree (an E felony) and Petit Larceny (an A misdemeanor). The Board has determined to provide the Commissioner an opportunity to submit such additional testimony and other evidence. The Commissioner should be represented at the further hearing. The Case Details - Charges and the

Certificate of Disposition should be entered into evidence in the usual manner. Further testimony from the claimant should be taken on the issue.

The parties are to make arrangements with the Hearing Section to review the transcript before the remanded hearing. The employer should be offered the opportunity to cross examine the claimant on her testimony from the first hearing.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER